IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Bail Appl..No. 5728 of 2007()

CRIME NO.135/07 OF KOTTARAKKARA EXCISE RANGE

: PETITIONER

ANILKUMAR, S/O.KANAKARAJAN,
PERUMKULAM P.O., KOTTARAKKARA.

BY ADV. SRI.ALAN PAPALI
SRI.M.REVIKRISHNAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5728 of 2007

Dated this the 24th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to keep 870 litres of wash in his premises. When the excise party, on receipt of discreet prior information, reached the scene of the crime, they found 870 litres of wash available in the premises. A person who was available in the premises allegedly took to his heels to avoid apprehension by the excise officials. It is the case of the detecting officer that the premises are in the possession of the petitioner and that it was the petitioner who ran away from the premises to avoid apprehension by the excise officials. Crime has been registered. Investigation is in progress.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent of the allegations raised against him. The property does not belong to him. It is not in his possession. He is not the one who ran away when the excise

party was seen at the premises. In these circumstances anticipatory bail may be granted to the petitioner, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. At the moment and with the available inputs, there is absolutely no circumstances which can justify the prayer for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The excise party had reached the scene on receipt of specific prior information about the involvement of the petitioner. They were satisfied that the premises belong to the petitioner. They were satisfied that the petitioner is the one who ran away from the premises. No contra material is available at present. There is not even a case that the excise officials had any animosity against the petitioner to justify his false implication as an accused. In any view of the matter, there are no circumstances in this case which can justify the prayer of the petitioner to be armed with an order of anticipatory bail. Such an order would hamper the smooth course of investigation. In these circumstances, this petition may be dismissed. The petitioner may be directed to resort to the ordinary and normal

course of appearing before the investigating officer or the learned Magistrate having jurisdiction. He must then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. There is nothing before me to show that the investigating officers are resorting to the power of arrest which is available to them with any oblique or mala fide motive. The available inputs justify at least a strong suspicion about the petitioner and I do not in these circumstances find any necessity to permit the petitioner to be armed with an order of anticipatory bail.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007